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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

C.S., Petitioner, v. THE SUPERIOR COURT OF STANISLAUS COUNTY, Respondent; STANISLAUS COUNTY COMMUNITY SERVICES AGENCY, Real Party in Interest.	F072545 (Super. Ct. No. 517067) **OPINION**
O.M., Petitioner, v. THE SUPERIOR COURT OF STANISLAUS COUNTY, Respondent; STANISLAUS COUNTY COMMUNITY SERVICES AGENCY, Real Party in Interest.	F072546 (Super. Ct. No. 517067)

THE COURT*

ORIGINAL PROCEEDING; petition for extraordinary writ review. Ann Q. Ameral, Judge.

Dependency Legal Services and David M. Meyers, for Petitioner C.S.

Dependency Associates of Stanislaus and Nadine Salim, for Petitioner O.M.

No appearance for Respondent.

John P. Doering, County Counsel, and Robin Gozzo, Deputy County Counsel, for Real Party in Interest.

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Petitioners O.M. (father) and C.S. (mother) seek extraordinary writ review of the juvenile court's orders issued at a contested 12-month review hearing (§ 366.21, subd. (f))[1] terminating their reunification services and setting a section 366.26 hearing as to their one-year-old daughter, N.M.[2] They contend the juvenile court erred in not returning N.M. to their custody or alternatively in not continuing their reunification services to the 18-month review hearing. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

Petitioners have a long child welfare history of domestic violence involving incidents in which father regularly beat and choked mother and threw her against the wall. During one of the incidents, mother drew a knife and threatened to stab father. These incidents occurred while petitioners cared for mother's two minor daughters and petitioners' minor daughter A.S.

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* Before Gomes, Acting P.J., Kane, J. and Franson, J.

1 All statutory references are to the Welfare and Institutions Code.

2 On our own motion, we consolidated our case Nos. F072545 and F072546 under case No. F072545 in an order issued on December 30, 2015.

The juvenile court first became involved with the family in October 2013 after the paternal grandmother and temporary guardian of mother's two oldest daughters was court-ordered to return them to mother's custody. When the girls learned that they had to return to mother and father's custody, they became fearful and the oldest threatened to kill herself. The girls reported that father often hit their younger sister, A.S., leaving bruises and marks on her torso. Petitioners vehemently denied the girls' accusations.

The juvenile court exercised its dependency jurisdiction over the girls and ordered petitioners to participate in reunification services, including a domestic violence program. However, they minimally participated in the program and maintained their denial. As a result, when mother gave birth to N.M. in June of 2014, the Stanislaus County Community Services Agency (agency) took N.M. into protective custody and placed her in foster care.

Initially, the agency supported returning N.M. to mother's custody as long as she was not living with father. Mother appeared to understand the agency's concern and indirectly confirmed there was domestic violence between them. However, she could not bring herself to separate from father.

In August 2014, the juvenile court conducted the dispositional hearing as to N.M. and ordered reunification services for both parents. They were ordered to complete a domestic violence program and participate in individual and family counseling. Mother was also ordered to participate in a domestic violence support group.

In its report for the six-month review hearing, the agency recommended the juvenile court terminate petitioners' reunification services for failing to make any demonstrable progress. Maryanne Cose, mother's individual counselor and the couples' counselor, reported that mother was overly concerned about father and how he was doing and father's focus was on the unfairness and injustice of their situation. They were encouraged to live apart and mother left father for a short time but returned. The social worker offered to arrange for mother to relocate to a family center where she could have

N.M. on a trial visit but she refused. Meanwhile, father engaged in a verbal altercation with a parent mentor and so frightened her that no one from that agency would monitor his visits. Additionally, his domestic violence counselor was afraid to confront him on the domestic violence issue for fear of how it might affect mother.

In March 2015, following a contested six-month review hearing, the juvenile court found that the agency provided petitioners reasonable reunification services and that they made fair progress. The court decided to give petitioners a second chance and continued reunification services to the 12-month review hearing which it set for August 2015. The court also ordered the agency to arrange supervised community visits. At the same hearing, the juvenile court conducted an 18-month review of services as to N.M.'s three older siblings and terminated petitioners' reunification services as to them.[3]

By August 2015, petitioners had established a home and were employed and mother was pregnant. Father had completed a domestic violence program and was participating in individual counseling with his counselor, Lupe Ruelas-French. However, he had made little progress. Ms. Ruelas-French reported that she had seen father four or five times since the last reporting period and said he still focused on others rather than himself. Meanwhile, mother had not participated in her domestic violence program at all and, though she attended counseling sessions with Maryanne Cose, she was unwilling to make the necessary changes to reunify with N.M.

In its report for the 12-month review hearing, the agency advised against returning N.M. to petitioners' custody. It believed they were engaging in domestic violence and that mother was hiding it. In addition, the agency had not advanced visitation beyond monitored community visits on the recommendation of Ruelas-French and Cose. The

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[3] Father filed a petition for extraordinary writ as to A.S. which was denied by this court in case number F071237. In July 2015, at a section 366.26 hearing, the juvenile court ordered a permanent plan of guardianship for mother's two oldest daughters and set a section 366.26 hearing to establish a permanent plan of adoption for A.S.

agency recommended the juvenile court terminate petitioners' reunification services and set a section 366.26 hearing to establish a permanent plan of adoption for N.M.

In August 2015, the juvenile court convened a contested 12-month review hearing which concluded in October. Mother testified and denied father ever physically abused her, claiming her daughters lied. She said her relationship with father had improved since he started working. Father did not testify.

Maryanne Cose testified she was concerned there were still control issues between mother and father even though they both denied it. She suspected this because mother would not raise issues in couples' counseling that she raised in individual counseling such as separating from father. Mother finally discussed moving out during their last couples' session in August 2015. Father accused mother of being "selfish" for wanting to leave.

Ms. Cose further testified, on cross-examination by mother's attorney, that her training in domestic violence included a cultural component. Asked whether it was fair to say that father was African-American, she agreed that she thought he was. She was taught that the African-American male presented as firm, typically loud and authoritative in the home. She could not say whether father displayed those attributes since she had never visited him at home. She said she treated everyone the same regardless of his or her culture unless she was made aware of any religious, spiritual or cultural issues. She was not made aware of any such issues in father's case.

Lupe Ruelas-French testified that father acknowledged "a lot of arguing" with mother but did not admit physically abusing her. He blamed others for his situation and believed he was being racially targeted. She explored that subject with him by discussing his body language and how others perceived him. However, she believed the time they spent on that subject was an impediment to his therapeutic progress.

Judi Schardijn, father's domestic violence counselor, testified that father presented a low risk of reoffending because he admitted only to engaging in mental, emotional and

verbal abuse, intimidation and controlling behavior. She said the risk for repeat abuse fluctuates and pregnancy and a baby in the home can increase the risk of domestic violence. She could not assess father's recidivism.

Michelle Silveira, the social worker assigned to mother and father's case, testified that father believed he was targeted because of his cultural identity. She said she was concerned domestic violence continued even though there were no ongoing police reports of it. The absence of reports however was not significant in this case because mother and father had not historically reported such incidents.

Following testimony, mother's attorney asked the juvenile court to return N.M. to her parents, arguing the agency failed to meet its burden of proving that doing so would place her at risk of harm. Father's attorney argued the agency failed to provide father reasonable services because it did not acknowledge or deal with his perception that he was mistreated because of his race. On rebuttal, county counsel argued that since father did not testify, there was no evidence of his ethnicity or his state of mind with respect to how he was treated. She further argued father's attorney could have, but did not, file a section 388 petition to modify the case plan if it did not meet father's needs.

In October 2015, the juvenile court issued its ruling. It found that petitioners had not made substantial progress in their court-ordered services since the six-month review hearing. As to mother, the court noted that she attended only four individual counseling sessions in six months and had not participated in any domestic violence counseling sessions. The court therefore determined that it would be detrimental to return N.M. to parental custody. The court further found that the agency provided mother and father reasonable reunification services but that there was not a substantial probability N.M. could be returned to their custody within the two months remaining before the 18-month review hearing. Consequently, the court terminated their reunification services and set a section 366.26 hearing.

This petition ensued.

DISCUSSION

I. Detrimental Return

Petitioners contend the juvenile court erred in not returning N.M. to their custody. Mother argues she made sufficient progress in her services plan to provide N.M. a safe home. Father argues he substantially completed his services plan. Neither of their arguments, however, directly bear on the legal standard underlying the court's decision; that is, whether substantial evidence supports the juvenile court's finding it would be detrimental to return N.M. to their custody.

There is a statutory presumption operative at each review hearing that the child will be returned to parental custody unless the juvenile court finds, by a preponderance of the evidence, that the return of the child would create a substantial risk of detriment to the child's safety, protection or well-being. (§§ 366.21, subds. (e)(1) & (f)(1); 366.22, subd. (a)(1).) A parent's failure to regularly participate and make substantive progress in a court-ordered plan of reunification constitutes prima facie evidence of detriment. (§§ 366.21, subds. (e)(1) & (f)(1)(B); 366.22, subd. (a)(1).) However, compliance with a court-ordered plan does not negate the risk of detriment. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1142.) The ultimate question is whether the parent can meet the child's emotional and physical needs. (*Ibid.*)

On a challenge to the juvenile court's finding of detriment, we review the record to determine if substantial evidence supports the finding. (*In re Barbara R.* (2006) 137 Cal.App.4th 941, 951.) We conclude in this case that it does.

N.M. was removed from petitioners' custody because of the severe and ongoing domestic violence in the home. Yet, by the 12-month review hearing, mother had done virtually nothing to alleviate that situation. She refused to admit that father physically abused her and continued to live with him. In addition, she had not participated in any court-ordered domestic violence counseling. Rather than conclude from that evidence that mother made "sufficient progress," the juvenile court could easily find that she failed

to regularly participate and make substantive progress in her court-ordered domestic violence program and that her failure to do so constituted prima facie evidence that it would be detrimental to return N.M. to her custody.

In our view, the juvenile court could also find prima facie evidence that it would be detrimental to return N.M. to father because, although he completed his domestic violence program, he continued to deny physically abusing mother in the face of strong evidence that he did. Those facts support a finding he failed to make substantive progress and imply he failed to participate even if he regularly attended his classes.

Even if father's is not a prima facie case, the juvenile court could still find that N.M. could not be safely returned to father's custody based on his history of severe domestic violence and refusal to admit it. Father disputes that, arguing that any risk that may have existed in the past was ameliorated, pointing to the absence of any substantiated domestic violence allegations subsequent to 2013 and Schardijn's testimony that he presented a low risk of reoffending. No such conclusion can be drawn from that evidence. According to the testimony, petitioners were not likely to report their domestic violence and father's low risk rating did not take into account his physical violence because he refused to disclose it.

In sum, substantial evidence supports the juvenile court's finding it would be detrimental to return N.M. to petitioners' custody.

II. Termination of Reunification Services

Petitioners contend the juvenile court erred in terminating their reunification services. Mother argues the juvenile court's termination of services order was error because there was a substantial probability N.M. could be returned to her custody after an extended period of services. Father contends the court's order was error because the agency failed to provide him reasonable reunification services. We disagree.

If a child is under the age of three years when taken into protective custody, the juvenile court is authorized by statute to provide a maximum of 12 months of court-

ordered services from the date the child entered foster care. (§ 361.5, subd. (a)(1)(B).) A child is deemed to have entered foster care on the earlier of the date of the jurisdictional hearing or the date that is 60 days after the child was taken into protective custody. (§ 361.49.)

In this case, N.M. entered foster care on August 14, 2014, the date of the jurisdictional hearing. Thus, petitioners had received the maximum 12 months of reunification services when the juvenile court conducted the contested 12-month review hearing in August 2015.

Section 366.21, subdivision (g) guides the juvenile court's decision when, as here, the child is not returned to parental custody and the parents have received the maximum allowable period of services under the statute. The juvenile court must continue the case if it finds that there is a substantial probability that the child will be returned to parental custody within 18 months of the date the child was taken into protective custody or that reasonable services have not been provided. (§ 366.21, subd. (g)(1).) Otherwise, the juvenile court must terminate reunification services and set a section 366.26 hearing. (§ 366.21, subd. (h).)

Mother contends the juvenile court had to continue her reunification services because there was a substantial probability N.M. could be returned to her custody. We disagree. In order to find a substantial probability of return, the juvenile court must find all of the following: (1) the parent consistently and regularly contacted and visited the child; (2) the parent made significant progress in resolving the problems that led to the child's removal; and (3) the parent has demonstrated the capacity and ability to complete the objectives of his or her treatment plan and provide for the child's safety, protection and physical and emotional well-being. (§ 366.21, subd. (g)(1).) In addition, the juvenile

court in this case had to find that N.M. could have been returned to mother's custody within the two months remaining until December 2015.[4]

Mother argues she met all three criteria to support a substantial probability of return finding. Specifically, she claims the evidence is "uncontroverted" that she consistently and regularly visited N.M. She also points to Ms. Cose's testimony that she made progress in her individual sessions and to her and father's statements there was no violence between them.

The record does not support mother's presentation of the evidence. For example, visitation *was* an issue. In ruling, the juvenile court expressed its disappointment that mother and father did not take full advantage of their visits. But even if we were to credit mother's version of the facts, substantial evidence nevertheless supports the juvenile court's finding there was not a substantial probability of return. Again, the root issue in this case was mother and father's failure to address the severe domestic violence in their relationship. They had had many months to address it and declined to do so. In addition, mother had the option of separating from father to reunify with N.M. and she chose not to. There was no reason for the court to believe that mother had the ability or the desire to eliminate domestic violence from her life and safely parent N.M. Therefore, the juvenile court had no choice but to terminate her reunification services.

Father contends the juvenile court had to continue his reunification services because the agency failed to provide him reasonable reunification services. He asserts, "If no other fact is clear, it is clear that father's need for services to address his concerns about institutionalized racism was a primary factor in this case." He claims there were references to his ethnicity by caretakers and that his counselor gave him lower ratings because of "the attention he gave to his feelings of being treated poorly because of his

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[4] N.M. was taken into protective custody in June 2014, making December 2015 the 18th month.

ethnicity." He further claims the agency made no attempt to directly deal with the issue or to provide a culturally competent social worker. As a result, he argues, he was hindered in his ability to progress in his services plan. We find no support for his contentions on the record.

First, institutionalized racism was *not* a primary factor in this case. Domestic violence was. Further, father does not refer this court to specific page and line citations where evidence of his claims might be found. Finally, Ms. Cose testified that she was trained to tailor therapy sessions to an individual's race when it was a concern. She was not, however, asked to do so in father's case. Had race been the important issue father claims it to be, he could have asked the juvenile court to incorporate it into his therapeutic plan. Having chosen not to, he cannot now claim that the agency was unreasonable in not addressing it.

Father further contends services were not reasonable because the agency failed to arrange unsupervised visits. According to the agency's report which was unchallenged, the agency was unable to move beyond monitored visits because father and mother's counselors could not recommend it.

We conclude substantial evidence supports the juvenile court's finding father was provided reasonable reunification services. We thus affirm the juvenile court's orders terminating petitioners' reunification services and setting a section 366.26 hearing as to N.M. and deny the petition.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final as to this court.